HC—78

(27) (26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. 298/ सन् 2003

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	APPELLANTS: (In Jail)	1. Shaniram, S/o Janak Ram, aged 26 years, Caste-Satnami, 2. Lachram, S/o Janakram, aged 34 years, Caste-Satnami, Both the appellants are R/o Village Tulsi, Police Station Sheorinarayan, District Janjgir-Champa (C.G.).
		- Versus -
	RESPONDENT:	State of Chhattisgarh through Station House Officer, Police Station, Sheorinarayan, District Janjgir-Champa (C.G.)

{Criminal appeal under Section 374 (2) of the Code of the Criminal Procedure}

Division Bench:

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Sunil Kumar Sinha, JJ.

8-8-2007

Mr. V.C. Ottalwar, counsel for the appellants.

Mr. Ashish Shukla, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on Dais

L.C. Bhadoo, J: -

The accused/appellants have preferred this appeal being aggrieved by the judgment of conviction and order of sentence dated 31st December, 2002, passed by the 2nd Additional Sessions Judge (Fast Track Court), Janjgir, in Sessions Trial No.464/2000, whereby learned Additional Sessions Judge after

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holding the accused/appellants guilty for commission of offence under Section 302 of the I.P.C., sentenced each of them to undergo imprisonment for life and pay a fine of Rs.100/-.

Case of the prosecution, in brief, is that on 1-7-2000 complainant Parasram was at his residence, Leelaram Kewat came and informed him that his brother Darasram (since deceased) has been attacked by Lachhram, Nageshwar, Shaniram, Janakram, Samaru, Jainarayan & Kushi Satnami with Lathi & axe near Kanharibhata. Darasram is being brought to the house by Manaram Nirmalkar & Ramnarayan Kashyap. After receiving the information when he went to Kanharibhata, he saw that near Cooperative Bank, Manaram & Ramnarayan were bringing his brother Darasram, body of Darasram was drenched with blood and there were injuries on head & body. On being asked by him, Darasram disclosed him that on account of illegal possession of Government land, some dispute started. The accused persons had attacked him, on hearing the cries, Manaram & Ramnarayan rushed towards him to rescue him on which the accused persons ran away. Parasram offered water to his brother Darasram, jeep was arranged and Darasram was taken to Sheorinarayan hospital. By the time, Darasram was taken to the hospital he was already dead. A report to that effect Ex.P-1 was lodged by Parasram at Police Station: Sheorinarayan. He also gave merg intimation Ex.P-2. After registering F.I.R. Ex.P-1, the investigation officer left for the scene of occurrence and after giving notice Ex.P-3 to the Panchas, he prepared inquest Ex.P-5 on the body of Darasram. Body of Darasram was sent to Primary Health Centre, Sheorinarayan under Ex.P-6 for post-mortem where Dr. M.L. Sahu (PW-8) conducted post-mortem and opined that cause of death was fracture of skull

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bone and torn of dura mater, mode of death was coma and nature of death was homicidal. Site plan Ex.P-7 was prepared by the Halka Patwari.

After due completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Janjgir, who in turn committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 24 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and they have been falsely implicated in the crime. They also examined one defence witness R.S. Prabhakar (DW-1).

Learned Additional Sessions Judge after hearing the arguments of counsel for respective parties, convicted and sentenced the accused/ appellants in the aforesaid manner, however, acquitted co-accused Kartikram, Jainarayan, Samaru, Janakram & Sahettar.

We have heard Mr. V.C. Ottalwar, learned counsel for the appellants and Mr. Ashish Shukla, learned Additional Public Prosecutor on behalf of the State/ respondent.

At the out set, Mr. Ottalwar has not disputed the homicidal death of Darasram. Moreover, Dr. M.L. Sahu (PW-8), who conducted post-mortem on the body of Darasram, has stated in his evidence that on 1-7-2000 at about 3 p.m. he conducted post-mortem on the body of Darasram, there were injuries on scapular region, one incised wound on occipital region, another incised wound

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on left side of occipital region, one crushed wound on temporal region, there was a depressed fracture on frontal and parietal bone, skull bone turned into three pieces, occipital skull bone was also fractured, the bone turned into five pieces, there was laceration of dura mater. Cause of death was fracture of skull bone and laceration of dura mater and the death was homicidal in nature. In view of the above evidence, it is established that the death of Darasram was homicidal in nature.

As far as involvement of the accused/appellants in the crime in question is concerned, the prosecution has tried to establish its case based on the following circumstances: -

1) That, deceased Darasram made oral dying declaration before his brother Parasram (PW-1), complainant and
2) That, the attack was witnessed by Manaram (PW-3), Ramnarayan (PW-4) & Ramcharan (PW-7).

As far as the oral dying declaration made by Darasram before Parasram (PW-1) is concerned, in the first instance, Daras Ram Yadav (PW-11), driver of the jeep in which Darasram, injured, was being taken to the hospital, has stated in para 3 of his evidence that brother of Darasram namely, Parasram was enquiring from him as to who has attacked him, but Darasram was unconscious. He was not able to speak. Even Parasram (PW-1) has stated in his evidence that he was informed by Leelaram about the attack made by the accused persons on his brother, when he was going towards that side, he saw that Manaram & Ramnarayan were bringing Darasram towards the house, body of Darasram was drenched with blood and there were injuries on head & hand. When he enquired from his brother as to who has attacked, Darasram disclosed that on the ground of dispute of Government land, Nageshwar Satnami,

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Shaniram Satnami & Lachhram Satnami have attacked him with axe, whereas, Sahattar Satnami, Janak Satnami, Samaru Satnami, Jainarayan Satnami & Kushi Satnami have attacked with Lathi. Darasram further disclosed that Leelaram, Ramnarayan, Manaram & Phulsai had witnessed the attack, whereas, Manaram (PW-3) & Ramnarayan (PW-4) have not stated anything that Darasram made any oral dying declaration to his brother. Moreover, as per the evidence of Parasram (PW-1), the deceased disclosed him that all the accused persons attacked, whereas the eyewitnesses have stated that only Shaniram & Lachhram had attacked and remaining accused persons were standing at some distance.

Therefore, on the foregoing grounds, the theory of oral dying declaration appears to be created by Parasram. Dr. M.L. Sahu (PW-8) who conducted post-mortem on the body of Darasram, has stated that looking to the nature of injuries sustained by Darasram, it was not possible for him to speak. In the circumstances, case of the prosecution that deceased Darasram made oral dying declaration before Parasram does not inspire confidence of the Court. Even the trial Court has also disbelieved this aspect and we are of the considered opinion that the theory of oral dying declaration has rightly been disbelieved.

Now, coming to the evidence of eyewitnesses namely, Manaram (PW-3), Ramnarayan (PW-4) & Ramcharan (PW-7), Ramcharan (PW-7) has stated in his evidence that accused Shaniram had attacked Darasram with axe on backside of head only once, thereafter, Manaram & one Baiga lifted Darasram and took him to residence. In cross-examination, he has stated that he had not stated in the police case diary statement that he was taking rest after lunch. It is incorrect that he was taking rest after his lunch. He has not given statement to the Police,

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how it was written in the police case diary statement Ex.D-3 he does not know. In para 4, he has stated that Manaram came after the incident, he does not know how the quarrel started and he does not know whether Sahettar sustained any injury.

Therefore, Ramcharan (PW-7) has stated that only Shaniram attacked the deceased and none of the other accused persons attacked the deceased. Moreover, his evidence before the Court is contradictory to his police case diary statement Ex.D-3 in which he has stated that he was taking rest at his residence, he heard sounds from the side of society godown, he rushed towards that side, Ramnarayan also went along with him and the accused persons attacked with axe & Lathis.

Ramnarayan (PW-4) has stated in his evidence that on the fateful day at about 10.30 a.m. he was going towards Bhatapara, he heard commotion and was called by Manaram & Ramcharan, they said that Darasram be taken to the residence. This witness has stated that Manaram & Ramcharan asked him that Darasram be taken to the residence, whereas, Ramcharan (PW-7) has stated that when he reached there he saw that Manaram & one Baiga lifted Darasram and there was bleeding from the head of Darasram. This witness (Ramcharan) has not stated that he along with Manaram asked Ramnarayan to take Darasram. He has stated that Lakshram & Shaniram attacked Darasram with axe, Sahettar was holding Darasram. In para 13 of his cross-examination, he has stated that it is incorrect to say that Manaram disclosed him that Darasram has been attacked. He has further stated that it is correct that Ramcharan already reached before he reached on the spot, when he went to call Manaram, by that time, Marpeet was already over, he does not know how Marpeet started and who participated in the Marpeet, he came to know only on the information

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given by Manaram & Ramcharan. Therefore, he was not eyewitness to the incident, whereas, Ramcharan as has been discussed earlier, has stated that Manaram (PW-3) & Ramnarayan (PW-4) were already there before he reached.

Manaram (PW-3) has stated in his evidence that on the fateful day at about 11.30 a.m. he was in Limahakhar field where tractor was ploughing the land, he heard the commotion. He saw that accused Sahetar was holding Darasram by hand whereas, Nageshwar, Shaniram & Lakshram were attacking Darasram with axe and Samaru, Jainarayan & Janak were holding Lathis. This witness has stated that Nageshwar Shaniram & Lakshram had attacked the deceased with axe, whereas, Ramnarayan (PW-4) has stated that only Lakshram & Shaniram attacked with axe and Ramcharan (PW-7) has stated only about Shaniram. This is material contradiction between the three witnesses namely, Manaram (PW-3), Ramnarayan (PW-4) & Ramcharan (PW-7) regarding witnessing the crime by these witnesses.

In cross-examination, Manaram (PW-3) has stated that he was going to Limhakhar field whereas, in examination-in-chief, he has stated that he was already in the Limhakhar field. He has stated that in police case diary statement Ex.D-1 he had not stated that he was coming from the side of society godown. In para 8, he has stated that the society godown is at a distance of about ½ km. from his house and from there, place of occurrence is at a distance of about ½ km. In para 9, he has stated that when he heard commotion he was in the field, Ramnarayan was behind him, apart from Ramnarayan, Ramcharan was also there, whereas, Ramcharan has stated that Ramnarayan & Manaram were already there and Ramnarayan has stated that Manaram & Ramcharan were already there. Ramcharan has stated that Manaram came on the spot after the incident was over.

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Therefore, in view of the above contradictory evidence of these three witnesses viz., Manaram (PW-3), Ramnarayan (PW-4) & Ramcharan (PW-7), the prosecution has not been able to establish beyond reasonable doubt that any of the witnesses had in fact witnessed the incident. It appears from the evidence that all the three witnesses had reached on the spot after the incident was over, because there is contradiction in respect of the persons as to who attacked the deceased and there is contradiction about the presence of these three witnesses that as to who were already thereon the spot and who came later on, their statements are also contradictory with the police case diary statements. In the circumstances, the evidence of these three so called eyewitnesses does not inspire confidence of the Court about witnessing the incident by them. Hence, finding of the trial Court convicting the present two accused persons for committing the murder of Darasram cannot be sustained and the same is liable to be set aside.

In the result, the appeal of the appellants succeeds. Conviction and sentences imposed upon the accused/appellants for commission of offence under Section 302 of the I.P.C. are set aside and they are acquitted of the said charge. The appellants are said to be in detention since 3-7-2000, therefore, they be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge